

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2268 OF 2005

Kazi Safiruddin Muzaffaruddin ..Petitioner
Versus

The State of Maharashtra and Ors. ..Respondents

Mr.A.N.Maniyar for petitioner

Ms Mamta B Saadh for respondent nos.1 and 2

Mr.A.G.Kothari with Shaikh Nasir Masih for respondent
nos.3 and 4

CORAM : P.V.KAKADE, J.

DATE : 28TH NOVEMBER, 2005

P.C.:

1. I have heard the learned counsel for the petitioner as well as for the respondents.

2. This Writ Petition is preferred against the Judgment and order dated 27th June, 2005 passed by the Presiding Officer, School Tribunal, Mumbai Region, Mumbai dismissing the Appeal No.MMU/95/1998 and the Petitioner has sought quashing and setting aside the said order.

. The factual matrix involved in the petition shows that the petitioner was given appointment letter as a Lecturer dated 8.6.1996. The Appointment order vide Exh.A shows that the appointment was purely temporary for the period of one year. Subsequently the service was terminated and the petitioner was said to be reappointed for one year and again his services were terminated and hence the dispute started. In this regard the Dy. Director of Education, Mumbai passed the order to the effect that the Petitioner was appointed for two academic years on temporary basis for which purpose Education Department had given approval for both academic years. It was further directed that there was a full time vacancy of Economic Subject and in view of the fact that there was a clear vacancy the Management was required to appoint the Petitioner on probation basis from the initial date of appointment but the Management did not do so. It was also observed that the Petitioner has completed two years on one open vacancy, he has already completed his two years of probation period and therefore, the termination of services made by the Management was held to be illegal. The Management proceeded against this order and in the result the School Tribunal passed the impugned order as

stated above.

3. Today the learned counsel for the Petitioner has sought to put reliance on the provision of Section 5(2) of the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 (hereinafter called as "the said Act") and has urged to the effect that by virtue of the said provision the Management effected the appointment on permanent basis, as it was filled in against the permanent vacancy which was originally advertised for which the Petitioner had responded and was appointed on temporary basis. In this connection the learned counsel for the petitioner also sought to put reliance on the ruling of the Single Judge of this Court in the case of **Shikshan Prasarak Mandal, Wani vs. Presiding Officer, School Tribunal, Amravati and Anr.** reported in 2005 (4) Mh.L.J. 485 which case was in respect of termination of services of the School Teacher and in the course of discussion the learned Single Judge also touched the aspect with regard to the Section 5(2) of the said Act. However, the Apex Court in the case of **Hindustan Education Society and Anr. vs. SK Kaleem SK Gulam Nabi and Ors.** reported in (1997) 5 SCC 152 has categorically observed to the effect that

when the appointment of the Respondent was purely temporary for a limited period then obviously the approval given by the competent authority was for that temporary appointment. As regards permanent appointments, they are regulated by sub-sections (1) and (2) of Section 5 of the Act according to which the Management shall, as soon as possible, fill up in the manner prescribed every permanent vacancy in a private school by appointment of a person duly qualified. However, the appointment of the respondent cannot be considered to be a permanent appointment in view of the fact that it was temporary, and therefore, cannot be considered as appointment on permanent basis only because the petitioner was serving for a period of two years, as in the present case.

. This judgment was followed by the Single Judge of this Court in **Writ Petition No.3488 of 1998 reported in 2001 (2) LJSOFT (URC) 26** holding that the view taken by the Apex Court in the case of Hindustan Education Society (Supra) is clear enough to the effect that the Management can make an appointment on temporary basis though the vacancy is clear and the candidate is qualified and is duly selected.

4. The learned counsel for the petitioner also made submission to the effect that in the present case the Petitioner was fully qualified and therefore, the view taken by the Dy. Director of Education should prevail in order to hold that the appointment of the petitioner was against the permanent vacancy and therefore, he should be treated as permanent in the service and his two years' service should be treated as on probation. However, this argument is devoid of any merits, in view of the provision of Sec.5(2) of the said Act and I am of the view that only because the petitioner was given service appointment for two consecutive years on temporary basis would not amount to permanent appointment making him probationary as contemplated under the said Act.

5. In the result I hold that there is no merit in the petition and as such it deserves to be dismissed and stands dismissed with no order as to costs.